SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 71

I. N. GORDON, APPELLANT,

vs.

STATE OF TEXAS.

APPEAL FROM THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED NOVEMBER 14, 1956
JURISDICTION NOTED JANUARY 28, 1957

OCTOBER TERM, 1957

No. 71

I. N. GORDON, APPELLANT,

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[fol. 2] (Caption omitted)

[fol. 3]

IN COUNTY COURT AT LAW OF HIDALGO COUNTY, TEXAS

COMPLAINT—Filed August 25, 1955

BEFORE ME, the undersigned authority, this day personally appeared

H. C. BLAKEMORE

who, after being sworn, upon oath says (that he has good reason to believe and charge) that one I. N. GORDON on (or about) the 24th day of August A. D., 1955, and before the making and filing of this complaint, in Hidalgo County, and State of Texas, did then and there unlawfully and wilfully have in his possession an illicit alcoholic beverage containing more than one-half of one per cent of alcohol by volume, and capable of use for beverage purposes alone, and when diluted, to-wit, Rum, in a container to which no tax stamp showing the payment of the tax on said beverage due to the State of Texas was affixed, and to which so unstamped container no valid evidence was affixed showing the payment of the tax on such beverage due to the State of Texas, and a tax stamp was then and there required by the laws of the State of Texas to be affixed to such container, and a tax on such beverage was then and there due to the State of Texas, and the tax imposed by the laws of the State of Texas on such illicit beverage had not been paid.
against the peace and dignity of the State.

/s/ H. C. BLAKEMORE

Duly sworn to by J. Bates jurat omitted in printing. (All in italics)

[fol. 4] (File Endorsement Omitted)

[fol. 5] IN THE

COUNTY COURT AT LAW OF HIDALGO COUNTY, TEXAS

INFORMATION—filed August 25, 1955

JIM BATES, Criminal District Attorney (County Attorney) of the County of Hidalgo, State aforesaid, in behalf

of said State, presents in the County Court-at-Law of Hidalgo County, State of Texas, at the JULY Term, 1955, of said Court, that I. N. GORDON on or about the 24th day of August, 1955, and before the making and filing of this information, in the County of Hidalgo, State of Texas, did then and there unlawfully, and willfully have in his possession an illicit alcoholic beverage containing more than one-half of one per cent of alcohol by volume, and capable of use for beverage purposes alone, and when diluted, to-wit, Rum, in a container to which no tax stamp showing the payment of the tax on said beverage due to the State of Texas was affixed, and to which so unstamped container no valid evidence was affixed showing the payment of the tax on such beverage due to the State of Texas, and a tax stamp was then and there required by the laws of the State of Texas to be affixed to such container, and a tax on such beverage was then and there due to the State of Texas, and the tax imposed by the laws of the State of Texas on such illicit beverage had not been paid.

Against the peace and dignity of the State.

JIM BATES
Criminal District Attorney
(County Attorney) of Hidalgo
County, said State

By /s/ J. BATES

(File Endorsement Omitted)

[fol. 6]

IN THE

COUNTY COURT AT LAW OF
HIDALGO COUNTY, TEXAS

No. Cr 1475

STATE OF TEXAS

vs

I. N. GORDON

DEFENDANT'S FIRST AMENDED MOTION TO DISMISS COMPLAINT AND INFORMATION—filed November 8, 1955

To the Honorable Judge of Said Court:

Now comes, I. N. Gordon, defendant in the above entitled and numbered cause and presents this his first amended motion to dismiss the complaint and information in this cause and in support thereof would show the Court the following:

I

Defendant is a resident of the State of North Carolina. At the time of his arrest, he was traveling through the State of Texas on a return trip from the Republic of Mexico to the State of his residence, North Carolina. Defendant would show that the goods, upon which no payment of tax, was made, were purchased in the Republic Mexico and such goods were still in the original package as when purchased in the Republic of Mexico. Defendant would further show the court that the Defendant's expressed intention, as to such goods, was merely to carry the same through the State of Texas to the final destination thereof, the State of North Carolina, and that defendant's expressed intention was not to use or sell such goods in the State of Texas.

II

Defendant would show the Court that the Stamp Tax, which allegedly was not paid by this defendant, and which nonpayment of tax forms the basis of the complaint and information in this cause, is in violation of Article 1, Section 8, Clause 3 of the Constitution of the United States of America as being a burden on the movement of goods in interstate commerce. Such Stamp Tax being in vilation of the Constitution of the United States of America is void as to this defendant and therefore [fol. 7] could not form a basis for a complaint or information against this defendant.

III

Defendant would show the Court that the Stamp Tax which is sought to be imposed, and the possession after the nonpayment of said tax forms the basis of the complaint and information in this cause, is a tax on articles imported into the territorial limits of the United States

of America from a foreign country, and which said articles are still in the original package in which they were imported. Such tax is void as to such articles and this defendant as it is in violation of Article 1, Section 10, Clause 2 of the Constitution of the United States of America. Such Stamp Tax being void as a violation of the Constitution of the United States of America could not, therefore, form a basis for a complaint and information against this defendant.

IV

Defendant would further show the Court that the provisions of the Texas Liquor Control Act were not intended to apply to this defendant or to persons simularly situated and that the Liquor Control Act was not intended to apply to goods in transit through the State. —Wherefore, premises considered, this Defendant prays that upon hearing of this motion that the Court dismiss the complaint and information in this cause and that he go hence without day.

/s/ B. R. STEWART
B. R. STEWART
EDINBURG, TEXAS
Attorney for Defendant

(File Endorsement Omitted)

[fol. 9]

IN THE
COUNTY COURT AT LAW
HIDALGO COUNTY, TEXAS

(Title Omitted)

DEFENDANT'S MOTION TO QUASH COMPLAINT AND INFORMATION—filed November 14, 1955

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, I. N. GORDON, defendant in the above entitled and numbered cause and presents this his motion to quash the complaint and information in this cause and in support thereof would show the Court the following;

I

Defendant is a resident of the State of North Carolina. At the time of his aresst, he was traveling through the State of Texas on a return trip from the Republic of Mexico to the State of his residence, North Carolina. Defendant would show that the goods, upon which no payment of tax was allegely made, were purchased in the Republic of Mexico and such goods were still in the original package as when purchased by this defendant in the Republic of Mexico. Defendant would further show the court that the Defendant's espressed intention, as to such goods, was merely to carry the same through the State of Texas to the final destination thereof, to wit: The State of North Carolina, and that Defendant's expressed intention was not to use, sell or distribute such goods in the State of Texas.

II

Defendant would show the court that the Stamp Tax, which allegedly was not paid by this defendant, and which nonpayment of tax forms the basis of the complaint and information in this cause, is in violation of Article 1, Section 8, Clause 3 of the Constitution of the United States of Americas for the reason that such tax is a burden on the movement of goods in interstate commerce. Such Stamp Tax being in violation of the Con-
[fol. 10] stitution of the United States of America is void as to this defendant and therefore could not form a basis for a complaint and information against this defendant.

III

Defendant would show the Court that the Stamp tax which is sought to be imposed, and the alleged possession after the nonpayment of said tax forms the basis of the complaint and information in this cause, is a tax on articles imported into the territorial limits of the United States of America from a foreign country, and which said articles were still in the hands of the original importer and in the original package in which they were imported. Such tax is void as to such articles above mentioned and as to this defendant as such tax is in violation of Article 1, Section 10, Clause 2 of the Constitu-

tion of the United States of America. Such Stamp Tax being void as a violation of the Constitution of the United States of America, could not, therefore, from a basis for a complaint and information against this defendant.

IV

Defendant would further show the Court that the provisions of the Texas Liquor Control Act were not intended to apply to this defendant or to persons simularly situated and that the Liquor Control Act, by its very terms, was not intended to apply to goods in transit through the State of Texas.

V.

Defendant would further show the Court that the offense sought to be charged in the complaint and information is not set forth in plain intelligible words, and further that the complaint and information are so vague and indefinite that this defendant is unable to ascertain the offense with which he is charged and that therefore he is unable to properly prepare his defense in this cause.

Wherefore premises considered, this defendant prays the court that the complaint and information in this cause [fol. 11] be quashed and that he be discharged from custody and that he go hence without day.

/s/ B. R. Stewart
Edinburg, Texas
Attorney for Defendant

Duly sworn to by Ian N. Gordon jurat omitted in printing. (All in italics)

(File Endorsement Omitted)

[fol. 12] In The
COUNTY COURT AT LAW OF
HIDALGO COUNTY, TEXAS

(Title Omitted)

Charge of the Court—filed November 15, 1955

Ladies and Gentlemen of the Jury:

The defendant, I. N. Gordon, stands charged by information with the offense of having in his possession illicit alcoholic beverage, to-wit, rum, not contained in a container to which is affixed a tax stamp or other valid evidence showing the payment of taxes on such illicit alcoholic beverage, to-wit, rum, due to the State of Texas, alleged to have been committed in the County of Hidalgo and State of Texas on or about the 24th day of August, 1955.

To this charge the defendant has pleaded "Not Guilty."

You are instructed that the laws of this State make it unlawful for any person to have in his possession illicit alcoholic beverage containing more than one-half of one per cent (½ of 1%) of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted. By the term illicit beverage is meant any alcoholic beverage possessed on which any tax imposed by the laws of this State has not been paid and the tax stamp affixed thereto.

Now, if you believe from the evidence beyond a reasonable doubt that the defendant, I. N. Gordon, did, in the County of Hidalgo and State of Texas, on or about the 24th day of August, 1955, have in his possession an illicit alcoholic beverage, to-wit, rum, not contained in a container to which was affixed a tax stamp or other valid evidence showing the payment of taxes on such alcoholic beverage, to-wit, rum, due to the State of Texas, as charged in the Information, then you will find him guilty of a misdemeanor and fix his punishment at a fine of not less than One Hundred Dollars ($100.00) nor more than [fol. 13] One Thousand Dollars ($1,000.00), or confinement in the county jail for not more than one (1) year, or by both such fine and imprisonment.

You are instructed that the defendant is presumed to be innocent until his guilt is established by legal evidence, beyond a reasonable doubt; and in this connection you must find that the State has proven beyond a reasonable doubt each and every allegation in the information and in case you have a reasonable doubt as to the defendant's guilt or as to whether the State has proven each and every allegation of the information, you will acquit him, and say by your verdict "Not Guilty."

You are further charged that in the event you convict the defendant is is not permissible for you under any circumstances in fixing the penalty to decide the same by lot. It sometimes happens that when juries are unable to agree as to the punishment to be inflicted, if any, they decide that each juror shall set down the amount of fine or length of imprisonment, in the juror's judgment, the punishment should be, all of which to be added together, and the sum total to be divided by six, and the quotient so ascertained by that division to constitute the verdict of the jury. This conduct is deciding a case by lot, and is not permissible, and you are instructed in this case that if you convict the defendant you must not consider any proposition of this character, but the punishment, if any, to be assessed, must be determined and agreed upon by each of the jurors on the facts of the case, as testified to by the witnesses and the law as given you in charge by the Court.

You are further instructed that the complaint and information filed against the defendant in this case cannot be considered by you as any evidence of the defendant's guilt.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

[fol. 14]

/s/ TOM L. HARTLEY
Judge of the County Court at Law
of Hidalgo County, Texas.

FORMS OF VERDICT

We, the Jury, find the defendant "Not Guilty."

.....
Foreman

We, the Jury, find the defendant guilty as charged in the complaint and information, and assess his punishment at a fine of $100.00.

/s/ A. S. LOVE
Foreman

We, the Jury, find the defendant guilty as charged in the complaint and information, and assess his punishment at imprisonment in jail for a term of.....

.....

Foreman

We, the Jury, find the defendant guilty as charged in the complaint and information, and assess his punishment at a fine of $....., and at imprisonment in jail for a term of.....

.....

Foreman

(File Endorsement Omitted)

[fol. 15] IN THE

COUNTY COURT LAW OF
HIDALGO COUNTY, TEXAS

CR-1475

STATE OF TEXAS

vs.

I. N. GORDON

FINAL JUDGMENT—December 22, 1955

Be it remembered that on the 11th day of December, A. D. 1955, came on to be heard in the above entitled and numbered cause Defendant's Motion to Dismiss Complaint and Information and came the State by and through her Criminal District Attorney, and the Defendant in his own proper person and by his attorney of record; and the court having considered the pleadings of the parties, the arguments of the Counsel and the law and the facts, is of the opinion that the motion to dismiss complaint and information should be denied,

It is therefore considered, ordered and adjudged by the Court that the said motion to dismiss complaint and information be and the same is hereby refused, and in all things overruled. Whereupon the defendant I. N.

Gordon, in open court, excepted to such judgment and ruling of the court.

Be it further remembered that on the 14th day of November A. D. 1955 this cause was called for trial and came the State by and through her Criminal District Attorney, and then came the defendant in his own proper person and by his attorney of record, and defendant presented his Motion to Quash Complaint and Information and the court having heard the said motion is of the opinion that the same should be refused and denied. It is therefore considered, ordered and adjudged by the court that the said motion to quash complaint and information herein be and the same is refused, and in all things overruled and denied. Whereupon the defendant, I. N. Gordon, in open court, excepted to such judgment and ruling of the court.

And then came both parties and announced ready for trial, and the defendant, I. N. Gordon, pleaded not guilty
fol. 16 to the information herein, and a jury, to-wit, A. S. Love and five others, was duly selected, impaneled, and sworn, who having heard the information read, and the defendant's plea of not guilty thereto, and having heard the evidence submitted, defendant made a motion before the court to instruct the jury to bring in a verdict of not guilty, which motion for instructed verdict was refused by the court and to which ruling of the court the defendant in open court excepted; and the jury having then been duly charged by the court, retired to consider of their verdict, and afterward returned into open court in due form of law the following verdict, which was received by the court, and is here now entered upon the minutes, to-wit;

> "We, the jury, find the defendant, I. N. Gordon guilty as charged in the information and assess his punisiment at a fine of $100.00 Dollars"
>
> (Signed) A. S. Love
> Foreman

It is, therefore considered, ordered, and adjudged by the court, that the State of Texas do have and recover of the defendant, I. N. Gordon, the said fine of $100.00 Dollars and all the costs of this prosecution, and the said

defendant, being present in court, is placed in the custody of the Sheriff who will commit him forthwith to jail until such fine and costs are paid. And execution may issue against the property of said defendant for the amount of such fine and costs. Whereupon the defendant, I. N. Gordon, in open court, excepted to such judgment and gave notice of an appeal herein to the Court of Criminal Appeals of the State of Texas, sitting at Austin, Texas, which said notice is here now entered of record.

It is thereupon ordered by the court that the said defendant enter into a recognizance herein in the sum of $250.00 Dollars, in the manner and conditioned as the law in such case requires.

/s/ Tom L. Hartley
Tom L. Hartley, Judge
County Court-at-Law

[fol. 17] Approved as to form:

B. R. Stewart, Attorney for defendant
Jim Bates, Criminal District Attorney for the State of Texas.

(File Endorsement Omitted)

[fol. 19] IN THE
COUNTY COURT AT LAW OF
HIDALGO COUNTY, TEXAS

(Title Omitted)

BILL OF EXCEPTIONS I—filed December 27, 1955

Be it remembered that on the 11th day of November, A. D. 1955 came on to be heard in the above entitled and numbered cause the defendant's First Amended Motion to Dismiss Complaint and Information, reference to which is here made for all purposes. Said motion being based on the premise that the tax which forms the basis of the complaint and information in this cause, is unconstitutional under Article 1, Section 8, Clause 3 and Article 1, Section 10, Clause 2 of the Constitution of the United States of America and being further based on the premise that the tax set up by the liquor control act

was not intended to apply to the defendant in this cause or to those simularly situated and that the liquor control act was not intended to apply to goods in transit through the state of Texas. The Court considered the pleadings of the defendant and the answer of the State of Texas and the arguments of counsel and then denied defendant's First Amended Motion to Dismiss Complaint and Information; to which decision and order of the court the defendant then and there excepted and tenders this bill of exceptions, and asks that the same be signed and filed as a part of the record in this cause.

/s/ B. R. Stewart
Attorney for defendant

ORDER ALLOWING—December 21, 1955

The foregoing bill of exception No. 1 having been reduced to writing by counsel for defendant, and having been presented to the undersigned presiding judge of said court for allowance and signature within 40 days and within the time prescribed by law, and having been [fol. 20] by me submitted to counsel for the State of Texas and found by him to be correct, and having been by me found to be correct, is hereby allowed, approved and ordered filed by the clerk of this court as a part of the record in such cause, this 21st day of December, A. D. 1955.

/s/ Tom L. Hartley
Judge of the County Court at Law
Hidalgo County, Texas

(File Endorsement Omitted)

[fol. 21] (Title Omitted)

BILL OF EXCEPTIONS II—filed December 27, 1955

Be it remembered that on the 14th day of November, A. D. 1955 came on to be heard in the above entitled and numbered cause the defendant's Motion to Quash Complaint and information, reference to which is here made for all purposes. Said motion was based on the premise that the tax, with possession of liquor without payment of said tax forming the basis of the complaint and in-

formation in this cause, is unconstitutional under article 1, section 8, clause 3 of the Constitution of the United States of America as being a tax on goods moving in interstate commerce; under article 1, section 10, clause 2 of the constitution of the United States of America as being a tax on goods imported into the continental limits of the United States from a foreign country, and upon the further premise that the tax set up by the Liquor Control Act was not intended to apply to this defendant or to other persons who are merely carrying liquor for their own personal use through the State of Texas. Defendant's sworn motion to quash alleged that the liquor was purchased in the Republic of Mexico, that the same was still in the original package in which it was purchased, that the defendant's intention as to the liquor was to carry the same through the State of Texas and not to use, sell or dispose of the same in the State of Texas. Whereupon the Court considered the sworn pleadings of the defendant, the State's answer and the arguments of counsel and then denied defendant's Motion to Quash Complaint and Information; to which decision and order of the Court the defendant then and there excepted [fol. 22] and tenders this bill of exceptions, and asks that the same be signed and filed as a part of the record in this cause.

/s/ B. R. Stewart
Attorney for defendant

ORDER ALLOWING—December 27, 1955

The foregoing bill of exception No. 2 having been reduced to writing by counsel for defendant, and having been presented to the undersigned presideing judge of said court for allowance and signature within 40 days and within the time prescribed by law, and having been by me submitted to counsel for the State of Texas and found by him to be correct, and having been by me found to be correct, is hereby allowed, approved and ordered filed by the clerk of this court as a part of the record in such cause, this 27th day of December, A. D. 1955.

/s/ Tom L. Hartley
Judge of the County Court at Law
Hidalgo County, Texas

(File Endorsement Omitted)

[fol. 23] (Title Omitted)

BILL OF EXCEPTIONS III—filed December 27, 1955

Be it remembered that on the 14th day of November, A. D. 1955 came on to be heard the above entitled and numbered cause. After all the evidence had been presented to the jury by the State and by the Defendant, both sides rested and the defendant made a motion that the Court instruct the jury to bring a verdict of not guilty. Said motion for instructed verdict was requested for the following reasons:

1. Based on the evidence presented to the jury and under the law, the tax forming the basis of the complaint and information was void and unconstitutional under Article 1, section 8, clause 3 of the Constitution of the United States of Americas as being a tax on goods moving in interstate commerce. Such tax being void and unconstitutional could not support a complaint and information charging possession of untaxed liquor.

2. Based on the evidence presented to the jury and under the law, the tax forming the basis of the complaint and information was void and unconstitutional under Article 1, section 10, clause 2 of the Constitution of the United States of Americas as being a tax by a state on goods imported into the continental limits of the United States from a foreign country, which said goods imported were still in the original package in which they were purchased. Such tax being void and unconstitutional could not support a complaint and information charging possession of untaxed liquor.

3. Based on the evidence presented to the jury and under the law, the tax, forming the basis of the com-
[fol. 24] plaint and information, as set up by the Texas Liquor Control Act was not intended by the Legislature to apply to any person, including this defendant, who was merely carrying liquor for his own personal use through the State of Texas.

The Court having considered defendant's motion for an instructed verdict, denied and overruled the same; to which decision and order of the Court the defendant then and there excepted and tenders this bill of excep-

tion and asks that the same be signed and filed as a part of the record in this cause.

/s/ B. R. Stewart
Attorney for defendant

ORDER ALLOWING—December 21, 1955

The foregoing bill of exception No. 3 having been reduced to writing by counsel for defendant, and having been presented to the undersigned presiding judge of said court for allowance and signature within 40 days and within the time presceibed by law, and having been by me submitted to counsel for the State of Texas and found by him to be correct, and having veen by me found to be correct, is hereby allowed, approved and ordered filed by the clerk of this court as a part of the record in such cause, this 21st day of December, A. D. 1955.

/s/ Tom L. Hartley
Judge of the County Court at Law
Hidalgo County, Texas

[fol. 25] (Title Omitted)

BILL OF EXCEPTIONS IV—filed December 27, 1955

Be it remembered that upon trial of the above entitled and numbered cause, before the Court's Charge was read to the jury the Defendant presented his objections in writing thereto, and presented to the Court written instructions as follows, to-wit:

I

If you find from the evidence beyond a reasonable doubt that the tax mentioned in the information on file in this cause was a tax on an article imported from a foreign country, which said article was in the hands of the original person importing said article and that such article was still in the original container in which it was imported into this country, then you will find the defendant, I. N. Gordon, not guilty and so say by your verdict.

II

If you believe from the evidence beyond a reasonable doubt that the defendant, I. N. Gordon, had in his possession an intoxicating beverage intended for shipment to a place without the State of Texas and that the said intoxicating beverage was intended for the own consumption of the defendant, I. N. Gordon, then you will find the defendant not guilty and so say by your verdict.

III

If you believe from the evidence beyond a reasonable doubt that the defendant, I. N. Gordon, had in his possession an alcoholic beverage which was not intended for use or distribution within the State of Texas but was merely being carried through the State of Texas [fol. 26] by the defendant, I. N. Gordon, then you will find the defendant, I. N. Gordon, not guilty and so say by your verdict.

IV

You are instructed that the laws of the United State of America duly enacted by the Congress provide that any person returning to the United States of America from a foreign country may bring into the United States, alcoholic beverages not in excess of one gallon which said alcoholic beverage shall be admitted free of any import duty assessed by the United States of America.

VI

You are instructed that the laws of this State impose a tax on the first sale of Distilled spirits except when a person authorized to export liquor from the state has in his possession any liquor intended for shipment to any place without the state, which liquors are kept in a separate compartment from that of liquors intended for sale within the State and when such liquors are so segregated and stamped to show that they are intended for shipment to a place without the state as required by regulations of the Liquor Control Board, then and in that event no tax shall be charged.

You are further instructed that any person who purchases alcoholic beverages for his own consumption may

transport same from a place where the sale thereof is legal to a place where the possession thereof is legal.

You are instructed that the sale of alcoholic beverages is legal in the Republic of Mexico.

VII

You are instructed that the basis of the information in this cause is possession of an illicit alcoholic beverage as heretofore defined, and that the beverage is not illicit if the tax on the liquor is not a valid tax or if the tax were not legally due the State of Texas on such liquors.

[fol. 27]

VIII

If you believe from the evidence beyond a reasonable doubt that the defendant, I. N. Gordon, did, in the County of Hidalgo and the State of Texas, on or about the 24th day of August, 1955, have in his possession an illicit alcoholic beverage, to wit, Rum, in a container to which no stamp was affixed showing the payment of a valid tax or other valid evidence showing the payment of a valid tax on such alcoholic beverage, to wit: Rum, validly due to the State of Texas, as charged in the information, then you will find him guilty of a misdemeanor and fix his punishment at a fine of not less than One Hundred ($100.00) Dollars nor more than One Thousand ($1,000.00) Dollars or confinement in the county jail for not less than one day nor more than one year or by both such fine and imprisonment.

IX

You are instructed the State of Texas cannot impose a tax on any article, including intoxicating liquors, which is imported into the continental United States from a foreign country so long as the article imported is in the hands of the original importer and so long as the same is in the original package in which it was imported into this country.

and asked the court that the same be given to the jury; which the court refused to do, and the defendant then excepted to the decision of the court regusing to give said instructions and tenders this bill of exception and

asks that the same be signed and filed as a part of the record in this cause.

/s/ B. R. Stewart
Attorney for Defendant.

ORDER ALLOWING—DECEMBER 21, 1955

The foregoing bill of exception No. 4 having been reduced to writing by counsel for defendant, and having been presented to the undersigned presiding judge of said court for allowance and signature within 40 days and within the time prescribed by law, and having been [fol. 28] by me submitted to counsel for the State of Texas and found by him to be correct, and having been by me found to be correct, is hereby allowed, approved and ordered filed by the clerk of this court as a part of the record in such cause, this 21st day of December, A. D. 1955.

/s/ Tom L. Hartley
Judge of the County Court at Law
Hidalgo County, Texas

(File Endorsement Omitted)

[fol. 30] Clerk's Certificate to foregoing transcript omitted in printing

[fol. 31] IN THE
COURT OF CRIMINAL APPEALS

No. 28,219

I. N. GORDON, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

Appeal from Hidalgo County

OPINION—May 23, 1956

An illicit beverage, within the meaning of the Texas Liquor Control Act, is any alcoholic beverage on which a tax imposed by the laws of this state has not been paid and a tax stamp affixed thereto (Art. 666-3a, Sec. (4), Vernon's P. C.).

It is unlawful to possess an illicit beverage in this state (Art. 666-17, Sec. (13), Vernon's P.C.).

The information alleged a violation of those statutes—that is, that appellant possessed an illicit alcoholic beverage, to-wit, rum.

The undisputed evidence shows that appellant, accompanied by two other persons, entered the United States from the Republic of Mexico at the port of entry at Hidalgo, Texas. At that time, he had in his possession eleven bottles each containing one-fifth gallon of rum, which he had purchased in the Republic of Mexico.

The tax due the State of Texas had not been paid thereon and no tax stamp evidencing such payment was attached to the bottles.

After appellant had passed the United States Customs' inspection and had entered the State of Texas, an agent of the Texas Liquor Control Board requested payment by appellant of the tax due on the rum and that a stamp evidencing such payment be affixed to the bottles.

Appellant refused to pay the tax, and his arrest followed.

Upon the trial of the case appellant testified that he had purchased the rum in the Republic of Mexico and, when apprehended, was on his way and transporting the rum to his home in North Carolina, and that he had no other intent in the possession or transportation of the [fol. 32] rum. That testimony was not controverted.

Appellant's conviction followed, with punishment assessed at a fine of $100.

It is appellant's contention that there was no tax due the State of Texas upon the rum, and that any statute of this state levying a tax thereon was void. This contention is based upon two propositions of law: (a) that Art. 1, Sec. 10, Clause 2, of the Constitution of the United States, the export-import clause, prohibits the State of Texas from levying a tax on the rum; and (b) that the rum was then moving in interstate commerce through the State of Texas when it was seized, and therefore could not be subject to taxation by the State of Texas, under Art. 1, Sec. 8, Clause 3, the commerce clause, of the Constitution of the United States.

It becomes material to notice the tax imposed by this state, and here challenged.

By statute, rum is a distilled spirit (Art. 666-3a, Sec. (3), Vernon's P. C.).

A tax is levied and imposed on the "first sale" of distilled spirits in this state (Art. 666-21; Vernon's P. C.).

The term "first sale," as above used, means, among other things, the first possession of any liquor imported into this state.

For tax purposes, distilled spirits imported from any foreign country are subject to taxation and must have affixed thereto the appropriate Texas tax stamp (Art. 666-17, Sec. (32), Vernon's P. C.

So then, there is no question but that the State of Texas has levied a tax upon the rum involved and shown by the facts of this case. If that tax is valid, this conviction should be affirmed; if not, then a reversal of the conviction should follow.

The tax imposed is not a property tax. Nor it is a tax [fol. 33] upon the privilege of importing or bringing the liquor into this state. The tax is a use or privilege tax, levied for the privilege of possessing the liquor in this state.

We are not here dealing with the possession or transportation of an article of ordinary merchandise or property. To the contrary, intoxicating liquor has always been subject to regulation by the state in the exercise of its police power. In fact, the Liquor Control Act expressly so provides (Art. 666-2, Vernon's P. C.).

We therefore have no difficulty in reaching the conclusion that the tax, here, was imposed upon the first possession of the liquor after its importation into this state.

It is apparent that the tax involved is not an import tax nor a tax upon an importation. In fact, the instant tax could not become an import tax because the importation must have been completed before the tax here levied attached.

We are constrained to conclude that the tax here involved is not prohibited by the import-export clause of the Federal Constitution.

As has been suggested, the commerce clause of the Federal Constitution is limited by the 21st Amendment thereto, wherein it is expressly provided that:

"The transportation or importation into any State,

Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

By Art. 666-8, Vernon's P. C., the legislature of this state has made it unlawful for one to import into this state, without a permit, any liquor in excess of one quart. In addition to the penal provision of the statute, forfeiture to the state of the liquor unlawfully imported is mandatory.

The quantity of rum here involved invokes that statute.

The Liquor Control Act provides various permits whereby liquor may be lawfully imported into this state. [fol. 34] There appears no escape from the conclusion that the rum was unlawfully imported by appellant into this state and therefore was not and could not be a commodity moving in interstate commerce.

In addition to the foregoing, note is taken of the fact that when the rum was transported to this state it was then subject to the tax imposed therein. Unless and until that tax was paid, the rum was an illicit beverage, and contraband subject to be seized as such.

This being true, the rum could not come under interstate commerce regulation. As it was contraband, the right to possess and to transport it did not exist.

From what has been said, we are unable to agree that the rum, when seized, was moving in interstate commerce.

The judgment of the trial court is affirmed.

Davidson, Judge

(Delivered May 23, 1956)

[fol. 35] (File Endorsement Omitted)

[fol. 36]

IN

COURT OF CRIMINAL APPEALS

AUSTIN, TEXAS

No. 28,219

I. N. GORDON, *Appellant*,

v.

THE STATE OF TEXAS, *Appellee*.

Appeal from County Court at Law of
Hidalgo County, Texas

MINUTE ENTRY OF JUDGMENT—May 23, 1956

Affirmed Opinion by Judge Davidson May 23, 1956

This cause came on to be heard on the transcript of the record of the Court below, and the same being inspected because it is the opinion of this Court that there was no error in the judgment, it is ordered, adjudged and decreed by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 37] IN THE
COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS
SITTING AT AUSTIN, TEXAS

No. 28,219

(Title Omitted)

(File Endorsement Omitted)

MOTION FOR REHEARING—filed June 7, 1956

Now comes the appellant in the above numbered and entitled cause, and respectfully moves the court to set aside the judgment heretofore rendered in this court on the 23rd day of May, 1956, affirming the judgment of the court below, and to grant a rehearing and reverse said judgment of the court below, good cause appearing, as follows:

I

Because the court erred in rendering its opinion in this cause which said opinion assumed that this defendant was relying on avoiding the tax imposed by the state of Texas by stating that such tax was void by virtue by two interdependent provisions of the United States Constitu-

tion to-wit: (a) Article I, Section 10, Clause 2, the import-export clause. (b) Article I, Section 8, Clause 3, the Commerce clause. It is defendant's contention that the tax is void on the rum brought into the United States by this defendant under either the import-export clause or under the commerce clause of the United States Constitution or that the tax could be void under both the import-export clause and the commerce clause of the United States Constitution. It is defendant's contention that the tax was void as being in violation of the import-export clause so long as the rum remained an import and that no tax by the State of Texas could be validly assessed until such time as the importation ceased. Defendant's other contention is that regardless of whether this article is an import or not, the fact that the goods were moving in interstate commerce was sufficient to bring the goods within the provision of the commerce clause of the United States Constitution, and any tax assessed on the goods while moving through the State of Texas, and not for delivery or use in the State of Texas, would be violative of the commerce clause of the Federal Constitution, the 21st Amendment not withstanding. The import-export clause and the commerce clause of the Federal Constitution are separate and distinct portions of the Constitution, either of which would be sufficient to knock down the tax sought to the imposed, without reliance of one upon the other. The two provisions of the court may supplement each other but are [fol. 38] not dependant upon each other for declaring the tax imposed as being invalid.

Because the court erred in assuming that the importation by the defendant herein was completed the very instant that the rum passed by the Federal Customs officers this defendant has raised the issue that such a tax as as attempted to be here imposed was unconstitutional under Article 1, Section 10, Clause 2 of the Constitution of the United States, the import-export clause. The defendant recognizes that the various portions of Article 666, Vernons Annotated Penal Code attempt to impose a tax upon the liquor such as that which was brought in by this defendant. However, it is submitted that in determining whether the provisions of Article 666 are

violative of any provision of the Federal Constitution, that the wording of the constitutional provisions and the decisions of the United States Supreme Court regarding such provision must be looked to as a guide and yard-stick to determine what an import is and when an article ceases to be an import. This honorable court has stated that such a tax as is sought to be imposed was not an import tax because the importation must have been completed. However, looking to the Federal decisions we find that in Low vs. Austin, 80 U.S. 517, Page 519, the Supreme Court states, " . . . . that the goods imported do not lose their character as imports, and become incorporated into the mass of property of the state, until they have passed from the control of the importer or been broken up by him from their original cases. *Whilst retaining their character as imports, a tax upon them in any shape, is within the constitutional prohibition.*" * The U. S. Supreme Court further stated in Hooven & Allison Company v. Evatt, 324, U.S. 652, 65 SCt 870, Page 879, " . . . , that things imported are imports entitled to the immunity conferred by the constitution: *that that immunity survives their arrival in this country and continues until they are sold, removed from the original package, or put to the use for which they are imported.*" * Here, obviously, by the statement of fact the rum was still in the hands of the three original importers to-wit: The defendant and his companions, and the rum was still in the original bottles in which they were imported and had not been put or intended to be put to the use for which they were imported, until such time as the rum was without the confines of the State of Texas. The U. S. Supreme Court has further said in the License Cases 46 U.S. 504, 5 How. 256, Page 609, "But while foreign liquors, imported according to the regulations of Congress remain in the cask, bottle, etc, in the original form, *the importer may sell them in that form at the port of entry, or in any other part of the United States, nor can any State law hinder the importer from doing so;* * nor does it make [fol. 39] any difference whether the imported article paid a tax on its introduction or was admitted as a free

* Italics added.

article; *until it passes from the hands of the importer, it is "an import", and belongs to regulated "foreign commerce" and is protected.*" It is here submitted that the importation of the rum would not have been completed by the defendant and his companions until such time as the rum was used in the State of North Carolina, and that any tax upon the rum by the State of Texas or any state between here and North Carolina would be clearly violative of the constitutional provision forbidding State taxes on imports.

There is a definite distinction to be applied as to imports into a state and imports which are merely traveling through a state to a final destination. Under the decisions above mentioned the immunity from state tax survives the arrival of an import into continental United States, until such time as the article imported has become a part of the general mass of goods within a state. The statement of facts shows that this rum was never intended by the defendant and his two companions to become a part of the general mass of goods within the state of Texas, and that by virtue thereof, any tax sought to be imposed by the State of Texas must fail as being a tax upon an import while such goods are still an import under the decisions of the United States Supreme Court.

III

Because this honorable court erred in assuming that the commerce clause of the Federal Constitution is limited by the 21st amendment, in that it failed to take note that the transportation or importation into any state prohibited by the 21st amendment *must be for delivery or use therein.* The rum brought into the United States by the defendant and his two companions was not intended for delivery or use in the State of Texas and consequently the 21st amendment would be of no assistance in upholding a tax which violated Article I, Section 8, Clause 3, the Commerce Clause of the Constitution of the United States.

Appellant represents that the honorable James S. Bates, Criminal District Attorney of Hidalgo County, Texas, is the attorney of record for the state and resides at Edinburg, Texas.

WHEREFORE appellant respectfully prays that this motion be granted and the judgment affirming that cause heretofore rendered herein be set aside and the judgment of the court below be in all things reversed.

/s/ B. R. Stewart
Attorney for Appellant
B. R. STEWART
207 E. Harriman St.
Edinburg, Texas

[fol. 40] IN

COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

No. 28,219

(Title Omitted)

MINUTE ENTRY OF ORDER OVERRULING MOTION FOR REHEARING WITHOUT WRITTEN OPINION—June 27, 1956

This cause came on to be heard on Appellant's Motion for Rehearing, and the same being considered, it is ordered, adjudged, and decreed by the Court that said motion be and the same is hereby in all things overruled.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 41] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 42] IN THE

COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS
SITTING AT AUSTIN, TEXAS

I. N. GORDON, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—filed September 21, 1956

Notice is hereby given that I. N. Gordon, the Appellant above named, hereby appeals to the Supreme Court of

the United States from the final order of the Court of Criminal Appeals of the State of Texas, entered on the 27th day of June, 1956 affirming the judgment of conviction of this appellant by the County Court at Law of Hidalgo County, Texas.

This appeal is taken pursuant to 28 U. S. C. A. Section 1257 paragraph 2.

Appellant was convicted of the Crime of possession of unstamped liquor in violation of Article 666-21, Article 666-17 Section 13, Article 666-3A Section 4 of the Vernon's Annotated Penal Code of the State of Texas; was sentenced to pay a fine of One Hundred Dollars ($100.00) and is presently enlarged on recognizance in the sum of Two Hundred and Fifty Dollars ($250.00).

II.

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(1) Original complaint and information filed in this cause.
(2) Defendant's First Amended Motion to dismiss complaint and information.
(3) Defendant's Motion to quash complaint and information.
(4) Charge of the County Court of Law to the Jury.
(5) Judgment of the County Court of Law, Hidalgo County, Texas.
(6) Defendant's Bills of Exceptions No. I-II-III-&-IV.
(7) Judgment of the Court of Criminal Appeal of the State of Texas, dated May 23, 1956.

(File Endorsement Omitted)

[fol. 43] (8) Defendant's Motion for re-hearing.

(9) Order of the Court of Criminal Appeal of the State of Texas, over-ruling Defendant's motion for re-hearing entered the 27th day of June, 1956.

III.

The following questions are presented by this appeal:

(1) The tax forming the whole basis for the complaint, information and prosecution of appellant in this cause was void being an unconstitutional tax under Article 1, section 10, clause 2, (the export-import clause) of the Constitution of the United States of America. Such tax is a tax by a state on goods imported into the continental limits of the United States from a foreign country, which said goods imported were still in the original package in which they were purchased, and in the hands of the original importer. Such tax, being void and unconstitutional, could not support a complaint, information or prosecution against the defendant charging possession of untaxed or unstamped liquor.

(2) The tax forming the whole basis of the complaint, information and prosecution of Appellant was void bing an unconstitutional tax under Article 1, section 8, clause 3, (the Commerce Clause) of the Constitution of the United States of America. Such tax is a tax on goods moving through the State of Texas in interstate commerce. Such tax being void and unconstitutional could not support a complaint, information or prosecution against the defendant charging possession of untaxed or unstamped liquor.

/s/ B. R. Stewart
B. R. Stewart
Attorney for I. N. Gordon,
Appellant
207 East Harriman
Edinburg, Texas.

Proof of Service (Omitted in printing)

[fol. 44]

SUPREME COURT OF THE UNITED STATES

Order Noting Probable Jurisdiction—Jan. 28, 1957

Appeal from the Court of Criminal Appeals of the State of Texas.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the appellate docket as No. 718.

January 28, 1957

[fol. 46]

SUPREME COURT OF THE UNITED STATES

No. 396 Misc., October Term, 1956

I. N. GORDON, *Appellant*,

vs.

STATE OF TEXAS

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—January 28, 1957

ON CONSIDERATION of the motion for leave to proceed *in forma pauperis* in this case,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

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SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 71

I. N. GORDON, *Appellant*

vs.

STATE OF TEXAS, *Appellee*

Stipulation and Agreement—Filed September 16, 1957

It is stipulated and agreed by and between I. N. Gordon, Appellant, and the State of Texas, Appellee, by and through their respective counsel, that the agreed Statement of Facts, which formed a part of the record in Cause No. 28,219, styled I. N. Gordon, Appellant vs. State of Texas, Appellee, in the Court of Criminal Appeals for the State of Texas, was omitted through accident on the part of Appellant from inclusion in the printed record heretofore filed in this cause. It is further stipulated and agreed that such Statement of Facts is a necessary and material part of the record and both parties respectfully request that such Statement of Facts be made a part of the record herein as a supplemental record.

It is further stipulated and agreed, subject to the approval of this Honorable Court, that Appellee, the State of Texas may file Appellee's brief herein within thirty (30) days from the receipt by the Attorney General of Texas, counsel for Appellee, the State of Texas, a copy of the supplemental printed record containing the Statement of Facts above referred to.

WHEREFORE, premises considered, Appellant, I. N. Gordon and Appellee the State of Texas, pray that this Honorable Court enter its order of approval of this stipulation permitting the Statement of Facts to be made a part of the printed record in this cause and extend the time for filing of the brief on the part of the State of Texas to a period of thirty (30) days following the receipt by Appellee's Counsel, the Attorney General of Texas, of a printed copy of

the supplemental record containing such Statement of Facts.

B. R. STEWART
B. R. Stewart
Attorney for Appellant
2072 Harriman Street
Edinburg, Texas

WILL WILSON
Attorney General of Texas

C. K. RICHARDS
C. K. Richards
Assistant Attorney General
Attorneys for State of Texas
Capitol Station
Austin, Texas

IN THE COUNTY COURT AT LAW
HIDALGO COUNTY, TEXAS

No. CR 1475

THE STATE OF TEXAS

vs.

I. N. GORDON

Statement of Facts—Filed February 3, 1956

Be it remembered that upon the trial of the above entitled and numbered cause, in said court, at the November, 1955 term, the following were the facts and all the facts proved, to-wit:

The evidence presented by the State of Texas herein was as follows: The defendant, I. N. Gordon, entered the United States of America from the Republic of Mexico at the Hidalgo, Texas, port of entry. The defendant together with two companions had in their possession 11 fifth gallons of liquor. The witness, Joe Kolos, an employee of the Texas Liquor Control Board stationed at the International Bridge at Hidalgo, Texas to collect taxes on Alcoholic beverages, testified that he, Kolos, saw the liquor on the U. S. Customs inspection table, and while he, Kolos, was collecting the

tax money due by another person, the defendant was putting the bottles of liquor back into the trunk of defendants car. Mr. Kolos went to the defendant and requested that the defendant pay the stamp tax imposed by the State of Texas on the distilled spirits. The defendant refused to pay the tax stating that the same was unconstitutional. The defendant resisted the efforts of the witness Kolos to take possession of the liquor and to confiscate the same. The defendant left the port of entry at Hidalgo, Texas without paying the stamp tax on the liquor and he retained the liquor in his possession. The defendant was stopped by a State Highway Patrolman near the city limits of McAllen, Texas, a city about seven (7) miles distant from Hidalgo, Texas. The defendant and his two companions were detained by the Texas State Highway Patrolman until three (3) officers of the State Liquor Control Board, John Schilling, district supervisor, Mr. Blakemore, and Mr. Matthews, arrived and took the defendant into custody, searched his car, found and confiscated the liquor. The defendant was returned to the international bridge at Hidalgo, Texas, the defendant was offered another opportunity to pay the stamp tax and he refused to do so, the defendant was then taken to McAllen, Texas to appear before a Justice of the Peace, where he was charged with the offense in this case. In Lieu of making bond, the defendant was placed in the Hidalgo County Jail at Edinburg, Texas. He made bond the next evening about 7:00 p. m. The stamp tax was still unpaid at the time of trial. The liquor was still in the possession of the agents of the Texas Liquor Control Board at the time of trial and was introduced into evidence at the time of trial. No tax stamp was affixed on the bottles nor was there any evidence showing that the tax had been paid affixed to any of the bottles. The liquor introduced into evidence by the State was Bacardi Rum and contained more than one half (½) per cent alcohol by volume.

The three Liquor Control Board agents who testified for the State stated that the Texas Liquor Control Board maintains collection stations only at the Texas Mexican Border crossings for the collection of the tax on liquors from individuals. There are no collection stations located on the Texas-New Mexico border, the Texas-Oklahoma border, the Texas-Arkansas border, or the Texas-Louisiana border.

There is no other place in the State of Texas except on the Texas-Mexican border where an individual person can purchase liquor stamps to place on unstamped liquor. No other or further supervision or control by the State Liquor Control Board is made on a person importing liquor from the Republic of Mexico once the liquor stamp tax has been paid to the State of Texas.

The evidence presented by the defendant, I. N. Gordon, herein was as follows: The defendant and his companions purchased the liquor in question in the Republic of Mexico and was carrying the same with him when defendant and his companions entered the boundaries of the United States of America. The defendant was driving a car with a North Carolina license plate attached thereto. Defendant and his companions had been in the Republic of Mexico over six months. The defendant was cleared by the U. S. Customs office at the international bridge located at the Hidalgo, Texas port of entry. Defendant was requested to pay the Texas Stamp Tax on liquors brought into the State and the defendant refused to pay the tax stating to the Liquor Control Board Officer that the tax on liquor was unconstitutional as to any liquor which he, the defendant, was merely carrying through the State of Texas. The defendant informed the Liquor Control Officer at the international bridge at Hidalgo, Texas, and the other Liquor Control Officers who took him into custody, that he did not intend to use, sell or dispose of the liquor that he possessed while he, the defendant, was in the State of Texas. The defendant further informed the officers of the Liquor Control Board that he was traveling from the Republic of Mexico to his residence in the State of North Carolina; that the defendant was merely intending to carry the liquor through the State of Texas on his journey to the State of North Carolina.

Defendant testified that he bought 12 bottles of liquor in the Republic of Mexico contained in a cardboard box with cardboard dividers between the bottles; that one bottle had been taken from the box in Mexico and 11 bottles of liquor were taken from the cardboard box and placed on the inspection table at the U. S. Customs Office at the International Bridge at Hidalgo, Texas; that the defendant picked up the bottles from the inspection table and put them back

into the box in the trunk of his car; that each of the bottles was in the same condition, and the 11 bottles of liquor were put back in the same cardboard box which was in the same condition as when imported into the United States of America.

The witness Joe Kolos, employee of the Texas Liquor Control Board stationed at the International Bridge to collect taxes on alcoholic beverages, testified that he saw the liquor on the Customs' inspection table, and while collecting the tax money due by another person, the defendant put the bottles of liquor back into the trunk of the car. The witness Joe Kolos testified that he did not see the cardboard box in which the liquor was put by the defendant.

The defendant was released from the Hidalgo County Jail about 7:00 p.m. August 25, 1955. He spent the night in McAllen, Texas with his wife and daughter. The following morning the defendant and two companions left McAllen, Texas to complete his journey to the State of North Carolina. Defendant arrived in North Carolina on August 30, 1955. Defendant returned to Edinburg, Texas for this trial in the month of November, 1955. The liquor was intended for the personal use of the defendant and his companions in the State of North Carolina and was not at anytime intended for resale, use or disposal in the State of Texas. The testimony showed that the defendant was not told by any of the Liquor Control Agents or by the District Attorney that defendant could segregate liquors not intended for sale in the State of Texas and thereby escape payment of the tax. He was only told that he had to pay the tax.

The testimony is undisputed that 11 bottles of liquor were passed by the U. S. Customs Officers; that they notified Mr. Kolos that there were 11 bottles of liquor in defendant's and his companions' possession.

It is stipulated that 11 bottles of liquor were seized by the officers of the Liquor Control Board, one bottle was broken, after being seized; that only eight bottles of rum above described were offered in evidence.

It is hereby agreed that the foregoing is a correct statement of all the facts given in evidence on the trial of said above entitled and numbered cause.

Witness our signatures on this the 26th day of January, A. D. 1956.

J. BATES
Counsel for the State of Texas

B. R. STEWART
Attorney for Defendant

The foregoing statement of facts was submitted to me by the parties, and upon examination of the same I find it correct and approve it, and order the same to be filed by the clerk as a part of the record in said cause.

This the 3rd day of February, A. D. 1956.

TOM L. HARTLEY
Judge
County Court at Law
Hidalgo County, Texas

THE STATE OF TEXAS
COUNTY OF HIDALGO

I, GEO. L. ANDERSON, Clerk of the Conty Court at Law of Hidalgo County, Texas, hereby certify that the above and foregoing instrument is the Original Statement of Facts filed in cause number CR-1475, styled THE STATE OF TEXAS vs. I. N. GORDON and that same is recorded in the Criminal Minutes of Hidalgo County, Texas.

Witness my hand and the seal of said Court at office in Edinburg, Texas, this 7th day of February, A. D. 1956.

GEO. L. ANDERSON,
Clerk County Court at Law,
Hidalgo County, Texas

By ISABEL RAMIREZ, *Deputy*

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